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Tammy P. Friederichs

**OFFICE OF
APPELLATE COURTS**

January 17, 2001

JAN 18 2001

The Honorable Kathleen Anne Blatz
Chief Justice of the Minnesota Supreme Court
Minnesota Supreme Court
305 Minnesota Judicial Center
25 Constitution Avenue
St. Paul, MN 55155-6102

FILED

C 1-01-118

Dear Chief Justice Blatz:

Please find enclosed a courtesy copy of the following:

1. Amended Notice of Motion and Motion for Assignment of Cases to a Single Judge Pursuant to Minn. R. Gen. Prac. 113;
2. Memorandum of Law in Support of Motion for Assignment of Cases to a Single Judge Pursuant to Minn. R. Gen. Prac. 113;
3. Affidavit of Tammy P. Friederichs with attached exhibits; and
4. Proposed Order.

Yours truly,



TAMMY P. FRIEDERICHS

TPF:amf
Enclosures

cc: Michael M. Lafeber, Esq.

**STATE OF MINNESOTA
IN MINNESOTA SUPREME COURT**

**AMENDED NOTICE OF MOTION AND MOTION FOR ASSIGNMENT OF CASES
TO A SINGLE JUDGE PURSUANT TO MINN. R. GEN. PRAC. 113**

**Twin Cities Harley-Davidson, Inc.,
Plaintiff**

**v.
Jeffrey S. Berg,
Defendant.**

**TRIAL COURT CASE NO.:
19-C6-00-9217 (Dakota County)**

**Twin Cities Harley-Davidson, Inc.,
Plaintiff**

**v.
Bradley P. Bruggentheis,
Defendant.**

**TRIAL COURT CASE NO.:
C6-00-7728 (Anoka County)**

**Twin Cities Harley-Davidson, Inc.,
Plaintiff**

**v.
Rocklyn Bullis,
Defendant.**

**TRIAL COURT CASE NO.:
19-C4-00-9216 (Dakota County)**

**Twin Cities Harley-Davidson, Inc.,
Plaintiff**

**v.
Robert J. Byrnes,
Defendant.**

**TRIAL COURT CASE NO.:
CT-00-014268 (Hennepin County)**

**Twin Cities Harley-Davidson, Inc.,
Plaintiff**

**v.
Robert A. Cady,
Defendant.**

**TRIAL COURT CASE NO.:
C2-00-1539 (Rice County)**

**Twin Cities Harley-Davidson, Inc.,
Plaintiff**

v.

**Terrance J. Carter,
Defendant.**

**TRIAL COURT CASE NO.:
19-CX-00-9611 (Dakota County)**

**Twin Cities Harley-Davidson, Inc.,
Plaintiff**

v.

**David Denzer,
Defendant.**

**TRIAL COURT CASE NO.:
C4-00-7727 (Anoka County)**

**Twin Cities Harley-Davidson, Inc.,
Plaintiff**

v.

**Dave and Tracy Gough,
Defendant.**

**TRIAL COURT CASE NO.:
CT-00-012647 (Hennepin County)**

**Twin Cities Harley-Davidson, Inc.,
Plaintiff**

v.

**Jeff Jungwirth,
Defendant.**

**TRIAL COURT CASE NO.:
CT-00-012648 (Hennepin County)**

**Twin Cities Harley-Davidson, Inc.,
Plaintiff**

v.

**Tim Junkert,
Defendant.**

**TRIAL COURT CASE NO.:
C9-00-8288 (Anoka County)**

**Twin Cities Harley-Davidson, Inc.,
Plaintiff**

v.

**Jim Kinney,
Defendant.**

**TRIAL COURT CASE NO.:
CT-00-012649 (Hennepin County)**

**Twin Cities Harley-Davidson, Inc.,
Plaintiff**

**v.
Connie L. Kohrt,
Defendant.**

**TRIAL COURT CASE NO.:
CT-00-013032 (Hennepin County)**

**Twin Cities Harley-Davidson, Inc.,
Plaintiff**

**v.
Mark Lindstrom,
Defendant.**

**TRIAL COURT CASE NO.:
CT-00-012650 (Hennepin County)**

**Twin Cities Harley-Davidson, Inc.,
Plaintiff**

**v.
Cris C. Lindwall,
Defendant.**

**TRIAL COURT CASE NO.:
CT-00-012651 (Hennepin County)**

**Twin Cities Harley-Davidson, Inc.,
Plaintiff**

**v.
Alan L. Lucken,
Defendant.**

**TRIAL COURT CASE NO.:
2000-18572 (Scott County)**

**Twin Cities Harley-Davidson, Inc.,
Plaintiff**

**v.
Daniel Lund,
Defendant.**

**TRIAL COURT CASE NO.:
C1-00-8396 (Anoka County)**

**Twin Cities Harley-Davidson, Inc.,
Plaintiff**

**v.
Anne Marie Mascia,
Defendant.**

**TRIAL COURT CASE NO.:
C3-00-8240 (Anoka County)**

**Twin Cities Harley-Davidson, Inc.,
Plaintiff**

**v.
Steven A. Rose,
Defendant.**

**TRIAL COURT CASE NO.:
C6-00-7731 (Anoka County)**

**Twin Cities Harley-Davidson, Inc.,
Plaintiff**

**v.
Dave Schodde,
Defendant.**

**TRIAL COURT CASE NO.:
CT-00-012652 (Hennepin County)**

**Twin Cities Harley-Davidson, Inc.,
Plaintiff**

**v.
Mark E. Sutherland,
Defendant.**

**TRIAL COURT CASE NO.:
CT-00-013090 (Hennepin County)**

**Twin Cities Harley-Davidson, Inc.,
Plaintiff**

**v.
John Thorman,
Defendant.**

**TRIAL COURT CASE NO.:
CT-00-012653 (Hennepin County)**

**Twin Cities Harley-Davidson, Inc.,
Plaintiff**

**v.
Lawrence White,
Defendant.**

**TRIAL COURT CASE NO.:
C0-00-668 (Nobles County)**

**Twin Cities Harley-Davidson, Inc.,
Plaintiff**

**v.
Terrell M. Williams,
Defendant.**

**TRIAL COURT CASE NO.:
CT-00-012654 (Hennepin County)**

**Jeffrey S. Berg, Bradley P. Bruggenthies,
Rocklyn Bullis, Robert J. Byrnes, Robert A.
Cady, Terrance J. Carter, David Denzer,
Tracy Gough, Dave Gough, Jeff Jungwirth,
Tim Junkert, Jim Kinney, Connie L. Kohrt,
Mark Lindstrom, Cris C. Lindwall, Alan L.
Lucken, Daniel Lund, Anne Marie Mascia,
Steven A. Rose, Dave Schodde, Craig Smith,
Mark E. Sutherland, John Thorman,
Lawrence White, and Terrell M. Williams,**

**TRIAL COURT CASE NO.:
19-C8-00-9221 (Dakota County)**

Plaintiffs,

v.

**Twin Cities Harley-Davidson, Inc.,
Defendant.**

To: Twin Cities Harley-Davidson, Inc., above-named and its attorney Michael W. Unger, Rider Bennett Egan & Arundel, 333 South Seventh Street, Suite 2000, Minneapolis, Minnesota 55402.

PLEASE TAKE NOTICE, that the undersigned will bring the attached Motion on for hearing before the Honorable Kathleen Anne Blatz, Chief Judge of the Minnesota Supreme Court, with or without hearing, at a date and time to be determined or as soon thereafter as counsel may be heard.

MOTION

Pursuant to Minn. R. Gen. Prac. 113.01 and Minn. R. Gen. Prac. 113.03 (2001), Jeffrey S. Berg, Bradley P. Bruggenthies, Rocklyn Bullis, Robert J. Byrnes, Robert A. Cady, Terrance J. Carter, David Denzer, Tracy Gough, Dave Gough, Jeff Jungwirth, Tim Junkert, Jim Kinney, Connie L. Kohrt, Mark Lindstrom, Cris C. Lindwall, Alan L. Lucken, Daniel Lund, Anne Marie Mascia, Steven A. Rose, Dave Schodde, Craig Smith, Mark E. Sutherland, John Thorman, Lawrence White, and Terrell M. Williams (hereinafter "multi-plaintiffs") bring this motion to request that the Minnesota Supreme Court order that all

pretrial and trial proceedings in all cases above-referenced be heard before a single judge for reasons of efficiency and in the interests of justice.

Multi-plaintiffs base their request upon the facts of this case, the attached Memorandum of Law, and affidavit of Tammy P. Friederichs, and the arguments of counsel to be presented at the hearing, if any.

SISAM & WATJE, P.A.

Dated: _____

1/17/01



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Attorneys for Jeffrey S. Berg, Bradley P. Bruggenthies, Rocklyn Bullis, Robert J. Byrnes, Robert A. Cady, Terrance J. Carter, David Denzer, Tracy Gough, Dave Gough, Jeff Jungwirth, Tim Junkert, Jim Kinney, Connie L. Kohrt, Mark Lindstrom, Cris C. Lindwall, Alan L. Lucken, Daniel Lund, Anne Marie Mascia, Steven A. Rose, Dave Schodde, Craig Smith, Mark E. Sutherland, John Thorman, Lawrence White, and Terrell M. Williams

**STATE OF MINNESOTA
IN MINNESOTA SUPREME COURT**

**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR ASSIGNMENT OF
CASES TO A SINGLE JUDGE PURSUANT TO MINN. R. GEN. PRAC. 113**

**Twin Cities Harley-Davidson, Inc.,
Plaintiff**

v.

Jeffrey S. Berg,

Defendant.

**TRIAL COURT CASE NO.:
19-C6-00-9217 (Dakota County)**

**Twin Cities Harley-Davidson, Inc.,
Plaintiff**

v.

Bradley P. Bruggentheis,

Defendant.

**TRIAL COURT CASE NO.:
C6-00-7728 (Anoka County)**

**Twin Cities Harley-Davidson, Inc.,
Plaintiff**

v.

Rocklyn Bullis,

Defendant.

**TRIAL COURT CASE NO.:
19-C4-00-9216 (Dakota County)**

**Twin Cities Harley-Davidson, Inc.,
Plaintiff**

v.

Robert J. Byrnes,

Defendant.

**TRIAL COURT CASE NO.:
CT-00-014268 (Hennepin County)**

**Twin Cities Harley-Davidson, Inc.,
Plaintiff**

v.

Robert A. Cady,

Defendant.

**TRIAL COURT CASE NO.:
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Defendant.**

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**v.
David Denzer,
Defendant.**

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C4-00-7727 (Anoka County)**

**Twin Cities Harley-Davidson, Inc.,
Plaintiff**

**v.
Dave and Tracy Gough,
Defendant.**

**TRIAL COURT CASE NO.:
CT-00-012647 (Hennepin County)**

**Twin Cities Harley-Davidson, Inc.,
Plaintiff**

**v.
Jeff Jungwirth,
Defendant.**

**TRIAL COURT CASE NO.:
CT-00-012648 (Hennepin County)**

**Twin Cities Harley-Davidson, Inc.,
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**v.
Tim Junkert,
Defendant.**

**TRIAL COURT CASE NO.:
C9-00-8288 (Anoka County)**

**Twin Cities Harley-Davidson, Inc.,
Plaintiff**

**v.
Jim Kinney,
Defendant.**

**TRIAL COURT CASE NO.:
CT-00-012649 (Hennepin County)**

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**v.
Connie L. Kohrt,
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**Twin Cities Harley-Davidson, Inc.,
Plaintiff**

**v.
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**Twin Cities Harley-Davidson, Inc.,
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**v.
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**Twin Cities Harley-Davidson, Inc.,
Plaintiff**

**v.
Anne Marie Mascia,
Defendant.**

**TRIAL COURT CASE NO.:
C3-00-8240 (Anoka County)**

**Twin Cities Harley-Davidson, Inc.,
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**v.
Steven A. Rose,
Defendant.**

**TRIAL COURT CASE NO.:
C6-00-7731 (Anoka County)**

**Twin Cities Harley-Davidson, Inc.,
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**v.
Dave Schodde,
Defendant.**

**TRIAL COURT CASE NO.:
CT-00-012652 (Hennepin County)**

**Twin Cities Harley-Davidson, Inc.,
Plaintiff**

**v.
Mark E. Sutherland,
Defendant.**

**TRIAL COURT CASE NO.:
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**Twin Cities Harley-Davidson, Inc.,
Plaintiff**

**v.
John Thorman,
Defendant.**

**TRIAL COURT CASE NO.:
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**Twin Cities Harley-Davidson, Inc.,
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Defendant.**

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**v.
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Rocklyn Bullis, Robert J. Byrnes, Robert A.
Cady, Terrance J. Carter, David Denzer,
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Lucken, Daniel Lund, Anne Marie Mascia,
Steven A. Rose, Dave Schodde, Craig Smith,
Mark E. Sutherland, John Thorman,
Lawrence White, and Terrell M. Williams,**

**TRIAL COURT CASE NO.:
19-C8-00-9221 (Dakota County)**

Plaintiffs,

v.

**Twin Cities Harley-Davidson, Inc.,
Defendant.**

NATURE OF THE MOTION

Pursuant to Minn. R. Gen. Prac. 113.01 and Minn. R. Gen. Prac. 113.03 (2001), Jeffrey S. Berg, Bradley P. Bruggenthies, Rocklyn Bullis, Robert J. Byrnes, Robert A. Cady, Terrance J. Carter, David Denzer, Tracy Gough, Dave Gough, Jeff Jungwirth, Tim Junkert, Jim Kinney, Connie L. Kohrt, Mark Lindstrom, Cris C. Lindwall, Alan L. Lucken, Daniel Lund, Anne Marie Mascia, Steven A. Rose, Dave Schodde, Craig Smith, Mark E. Sutherland, John Thorman, Lawrence White, and Terrell M. Williams (hereinafter “multi-plaintiffs”) bring this motion to request that the Minnesota Supreme Court order that all pretrial and trial proceedings in all cases above-referenced be heard before a single judge for reasons of efficiency and in the interests of justice.

STATEMENT OF FACTS

In September of 1998, approximately 7,500 people initiated a class action against Twin Cities Harley-Davidson, Inc. (hereinafter “TCHD”) for damages. That case has been settled. Approximately 25 people, who either opted out of the class or suffered damages

after the class period, informed TCHD of their intent to bring their own multi-plaintiff suit for damages. (Hereinafter, these people are referred to as "multi-plaintiffs.") Both the class action case and the 25 multi-plaintiffs alleged violations of the Consumer Protection Acts (including consumer fraud and false and deceptive advertising) based on TCHD's pattern and practice of deceptive trade practices in both written and oral representations.

On June 23, 2000, the multi-plaintiffs' counsel provided TCHD's counsel with a letter specifically identifying the multi-plaintiffs, outlining their claims, providing TCHD with UCC notice, and notifying TCHD of their intent to commence litigation. Subsequently, the parties' attorneys engaged in a series of written and verbal communications to exchange information and discuss an early settlement of the claims. As the negotiations proceeded, the multi-plaintiffs established a date by which TCHD was to respond to their settlement demand. However, since TCHD's counsel said he was scheduled to be out of the office during that time frame, the multi-plaintiffs' counsel, out of courtesy, extended the deadline for settlement negotiations. Affidavit of Tammy P. Friederichs.

TCHD however took advantage of the extension to try to beat the multi-plaintiffs to the courthouse steps. Before the settlement negotiation deadline even expired, TCHD delivered 23 separate declaratory judgment actions in seven different counties, naming almost all of the multi-plaintiffs as defendants, to the sheriffs of the respective counties. Upon the expiration of the settlement negotiation deadline, but before the counsel was aware that any of the multi-plaintiffs had been served with the declaratory judgment actions, Metro Legal attempted to serve TCHD with the multi-plaintiff case.

TCHD's officers took deliberate steps to avoid service of process. Metro Legal, who attempted service on TCHD, concluded based on its observations, that TCHD's officers were

deliberately avoiding service.¹ Ex. B. The multi-plaintiffs also served their case on TCHD's officers and counsel via certified mail. TCHD's officers "REFUSED" to accept the certified mail. After these repeated attempts to serve TCHD, the multi-plaintiffs served their action by service on the Secretary of State. Affidavit of Tammy P. Friederichs.

PROCEDURAL HISTORY

Because of TCHD's action above described, there are currently 23 declaratory judgments pending in seven counties. *Id.* In an attempt to have all cases heard in one forum, the multi-plaintiffs sought dismissal of the 23 declaratory judgment actions in favor of allowing the multi-plaintiff case to proceed with all 25 plaintiffs² in one action. TCHD sought dismissal of the multi-plaintiff case. *Id.* In the declaratory judgment actions against Berg and Bullis, a Dakota County judge denied the motions for dismissal. Ex. C and D. In the other 21 declaratory judgment actions, the Rule 12 motions have not yet been heard or decided. Affidavit of Tammy P. Friederichs. In the multi-plaintiff action, the Dakota County judge granted TCHD's motion and dismissed the multi-plaintiff case. Ex. E. As soon as that Order is amended to include the standard language, "let judgment be entered accordingly," and judgment is entered, the multi-plaintiffs will be appealing that dismissal. Affidavit of Tammy P. Friederichs

In order to streamline these proceedings, save judicial resources, prevent inconsistent adjudications, and afford all parties the opportunity to bring their claims, the multi-plaintiffs

¹ Dawn Ausen, who also attempted service of process on TCHD, had similar experiences. Ex. A.

² The difference in the numbers arises from two facts: (1) TCHD did not bring a declaratory judgment action against Craig Smith; and (2) TCHD named Dave Gough and Tracy Gough in the same declaratory judgment action.